

Oversight Division

Committee On Legislative Research

SUNSET REVIEW

ALTERNATIVE FUEL
INFRASTRUCTURE
TAX CREDIT

*Prepared for the Committee on Legislative Research
by the Oversight Division*

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Committee on Legislative Research Oversight Subcommittee

THE COMMITTEE ON LEGISLATIVE RESEARCH, Oversight Division, is an agency of the Missouri General Assembly as established in Chapter 23 of the Revised Statutes of Missouri. The programs and activities of the State of Missouri cost approximately \$24.0 billion annually. Each year the General Assembly enacts laws which add to, delete or change these programs. To meet the demands for more responsive and cost effective state government, legislators need to receive information regarding the status of the programs which they have created and the expenditure of funds which they have authorized. The work of the Oversight Division provides the General Assembly with a means to evaluate state agencies and state programs.

THE COMMITTEE ON LEGISLATIVE RESEARCH is a permanent joint committee of the Missouri General Assembly comprised of the chairman of the Senate Appropriations Committee and nine other members of the Senate and the chairman of the House Budget Committee and nine other members of the House of Representatives. The Senate members are appointed by the President Pro Tem of the Senate and the House members are appointed by the Speaker of the House of Representatives. No more than six members from the House and six members from the Senate may be of the same political party.

Sunset reviews are assigned to the Oversight Division pursuant to Sections 23.250 to 23.298. After August 28, 2003, any new program authorized by the General Assembly shall sunset not more than six years after its effective date unless reauthorized by the General Assembly. The Oversight Division shall conduct a performance evaluation of the program as set forth in statute and prepare a written report. The report shall make recommendations on the sunset, continuation, or reorganization of a program.

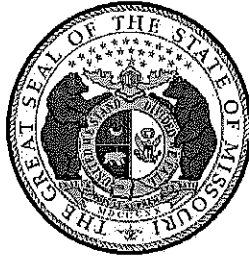
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**COMMITTEE ON LEGISLATIVE RESEARCH
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Members of the General Assembly:

The Joint Committee on Legislative Research is required by Section 23.259.1(3), RSMo to conduct performance evaluations of sunseting programs to determine and evaluate program performance in accordance with program objectives, responsibilities, and duties as set forth by statute or regulation. The Oversight Division has reviewed the following programs:

- Alternative Fuel Infrastructure Tax Credit
- Breast Cancer Awareness Trust Fund
- Rebuild Missouri Schools Program
- Wartime Veteran's Survivors Grant Program
- Big Government Get Off My Back Act Income Tax Deduction

The reports include Oversight's comments on (1) the sunset, continuation, or reorganization of the programs, and on the need for the performance of the functions of the programs; (2) the duplication of program functions; (3) the appropriation levels for each program for which sunset or reorganization is recommended; and possibly (4) drafts of legislation necessary to carry out the committee's recommendations pursuant to (1) and (2) above.

We hope this information is helpful and can be used in a constructive manner for the betterment of the state program to which it relates. You may obtain a copy of the reports from the Oversight Division website at <http://www.moga.mo.gov/htmlpages/losunsetreview.html>.

Respectfully,


Senator Brad Lager
Chairman

EXECUTIVE SUMMARY

The Alternative Fuel Infrastructure Tax Credit program was implemented to increase the availability of alternative fuels in the state. The program is administered by the Division of Energy, which was a part of the Missouri Department of Natural Resources (DNR) until August 28, 2013, when the division was transferred to the Department of Economic Development by Executive Order.

Alternative fuels, as defined for the program, include at least seventy percent by volume of ethanol, natural gas, compressed natural gas, liquified natural gas, liquified petroleum gas, hydrogen, or any mixture of biodiesel and diesel fuel. Under the program, DNR issued a total of \$179,290 in tax credits for thirteen projects.

The Oversight Division obtained and reviewed information from the Department of Natural Resources and the Department of Revenue on the program related to activities from FY 2009 through FY 2013, and this report is the result of our review.

Oversight noted there were only thirteen projects approved for this program, and the amount of credits issued was well below the \$6 million total cap (\$3 million in 2009, \$2 million in 2010, and \$1 million in 2011).

Oversight has no recommendation as to the reauthorization of this program. Truly Agreed To and Finally Passed Conference Committee Substitute for House Committee Substitute for Senate Bill 51 from the 2013 Legislative Session would have extended the program to 2019; however, the bill was vetoed by the Governor.

DNR officials told us they had received inquiries about tax credits for electric vehicle charging stations, which are not eligible for this program. If the program is reauthorized, Oversight would recommend consideration of electric vehicle charging stations and an expanded public awareness effort as part of the program.

Chapter 1

Purpose/Objectives

The General Assembly has provided by law that the Joint Committee on Legislative Research will conduct a performance evaluation of a program subject to the Missouri Sunset Act. The committee shall consider the criteria as listed in Section 23.268, RSMo in determining whether a public need exists for the continuation of a program, or for the performance of the functions of the program. A sunset review is the regular assessment of the continuing need for a state program to exist. A sunset review answers the basic questions of what has happened to this program since its inception and does the State of Missouri continue to “need” the services provided by the program.

The Joint Committee on Legislative Research directed the Oversight Division to conduct a Sunset Review of the Missouri Department of Natural Resources’ Alternative Fuel Infrastructure Tax Credit, Section 135.710, RSMo. This report provides the status on the Alternative Fuel Infrastructure Tax Credit as created by Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill 931 in the 2008 legislative session and fulfills the requirement as established by Section 23.268, RSMo.

The Oversight Division review addressed, but was not limited to the following:

1. Compiling and reviewing data related to the program since its inception.
2. Analyzing related events and changes to the program since its inception.
3. Analyzing and testing detailed program information.

Scope

The Oversight Division obtained and reviewed information from the Department of Natural Resources and the Department of Revenue on the Alternative Fuel Infrastructure Tax Credit from 2008 through 2012.

Methodology

The Oversight Division reviewed information on the Alternative Fuel Infrastructure Tax Credit in state law, and through correspondence with the Missouri Department of Natural Resources (DNR) and the Missouri Department of Revenue (DOR). Oversight also interviewed DNR and DOR staff who work directly with the program, and we reviewed and tested documents related to the program.

Background

In 2008, Conference Committee Substitute for House Committee Substitute for Senate Substitute for Senate Committee Substitute for Senate Bill 931 created the Alternative Fuel Infrastructure Tax Credit in Section 135.710, RSMo. The program provides a tax credit for the purchase and installation of alternative fuel storage and dispensing equipment between January 1, 2009 and January 1, 2012.

Alternative fuels, as defined for the program, must include at least seventy percent by volume of ethanol, natural gas, compressed natural gas, liquified natural gas, liquified petroleum gas, hydrogen, or any mixture of biodiesel and diesel fuel. The tax credit is limited to the lesser of twenty thousand dollars or twenty percent of total eligible project costs; the tax credit is not available for the purchase of land, the construction or purchase of a building, or the purchase of an existing alternative fuel facility. Recharging facilities for electrical vehicles are not eligible for this tax credit program.

The provisions in Section 135.710, RSMo include an automatic sunset six years from their effective date; the program will sunset on August 28, 2014 and will terminate December 31, 2015, unless the program is reauthorized by an act of the General Assembly. Conference Committee Substitute for House Committee Substitute for Senate Bill 51, adopted by the 2013 Session of the Missouri General Assembly, included language extending the Alternative Fuel Infrastructure Tax Credit, but the Governor vetoed the bill on June 26, 2013. Since no other changes have been made to the sunset language of this section of statute, the provisions are scheduled to expire on August 28, 2014.

Department of Natural Resources

The Missouri Department of Natural Resources (DNR) was created as of July 1, 1974, by the Omnibus State Reorganization Act of 1974. According to DNR, the department's mission is to protect, preserve and enhance Missouri's natural, cultural and energy resources. DNR serves all the state's citizens through its involvement in environmental and resource-related issues. In addition, DNR deals with critical energy issues, helps develop mineral resources in an environmentally safe manner, protects Missouri's land, air and water resources, and works to preserve the state's historic and natural heritage through the operation of state parks and state historic sites.

The department's Division of Energy assists, educates, and encourages Missourians to advance the efficient use of diverse energy resources, to provide for a healthier environment, and to achieve greater energy security for future generations. The Division is responsible for reviewing applications, issuing credits, and monitoring projects in the Alternative Fuel Infrastructure Tax Credit program.

Effective August 28, 2013 the Division of Energy was transferred from the Department of Natural Resources to the Department of Economic Development by Executive Order 13-03.

Department of Revenue

The Missouri Department of Revenue serves as the central collection agency for most taxes and fees due the state. The Department is also responsible for motor vehicle titling and registration, and issuing drivers' licenses. DOR redeems tax credits when they are submitted in lieu of payments by Missouri taxpayers.

Chapter 2

Comments

The Alternative Fuel Infrastructure Tax Credit (AFITC) is awarded based on a percentage of the cost of constructing or purchasing qualified alternative fuel vehicle refueling facilities. The credit is available only for costs directly associated with the purchase and installation of equipment used for storage and dispensing of alternative fuels into motor vehicles owned by eligible applicants or private citizens. The law further requires at least fifty-one percent of the costs associated with the project be paid to qualified Missouri contractors, but this requirement does not apply if no qualified Missouri contractor is located within seventy-five miles of the property.

The Alternative Fuel Infrastructure Tax Credit program included a cap for each tax year; the cap was three million dollars for 2009, two million dollars for 2010 and one million dollars for 2011. The original fiscal note for the proposal indicated the only cost for the program would be the amount of the tax credits in a range up to the annual caps.

Applying for the Tax Credit

To be eligible for this credit, an applicant must complete an Alternative Fuel Infrastructure Application for Certification (MO 780-1706) form. The form requires information on the project owner, project site location, construction or installation dates, architect, engineer and vendor, as well as an accounting of construction costs. Upon receipt of the completed application form, DNR reviews the information for accuracy and completeness, and verifies the physical existence of the project with a site visit. The application review is done by an Energy Specialist, with each step of the review process documented in detail on an Application Review Checklist. When the review is completed, DNR issues a Tax Credit Certificate of Eligibility informing the applicant of the amount of tax credits awarded for the project. When the Certificate of Eligibility is issued, DNR also notifies the Department of Revenue of the amount of credits awarded to the applicant.

Tax Credit Recipients

The Department of Natural Resources provided the following listing of recipients of the tax credit, the amount of their project totals, and the tax credit amounts awarded.

Table 1 - Projects and Tax Credits

Project Calendar Year	Project Owner	Location	Fuel Type	Project Cost	Tax Credits Awarded
2009	Kum & Go, LLC	Neosho	E85	\$93,954	\$18,791
2009	Warrenton Oil Company	Truesdale	E85	\$46,612	\$9,322
2009	Ray-Carroll Fuels, LLC	Richmond	E85	\$588,822	\$20,000
2009	Tina Oil & Propane, LLC	Tina	Propane	\$20,001	\$4,000
2009	Warrenton Oil Company	Truesdale	E85	\$32,750	\$6,550
2009	TempStop, LLC	Lee's Summit	E85	\$94,931	\$18,986
2010	C.B. Leasing, Inc.	North Kansas City	E85	\$51,379	\$10,276
2011	Crossroads General Store, LLC	Bowling Green	E85	\$463,721	\$20,000
2011	Laclede Venture Corp.	St. Louis	Compressed Natural Gas	\$54,172	\$10,835
2011	E.R. Corporation	Piedmont	E85	\$51,826	\$10,365
2011 *	TempStop LLC	Lee's Summit	E85	\$80,027	\$16,005
2011 *	Kum & Go, LC	St. Robert	E85	\$70,801	\$14,160
2011 *	Service & Supply Cooperative	Bellflower	E85	\$110,697	\$20,000
Total					\$179,290

* These projects were completed in 2011, but were reported to DNR and issued credits in 2012.

Source: Department of Natural Resources

Verification Procedures

The Division of Energy provided Oversight with their procedures for processing and verifying the information on the Application form. The Division also provided Oversight with a copy of their procedure for entering applicant information into the state's Customer Management System for tracking tax credits.

Oversight reviewed the DNR procedures and reports, and inspected the files of a sample of the projects in this program, as listed above. We considered the procedures adequate to ensure program integrity, and we noted the files were well organized and complete.

Tax Credit Redemptions

The AFITC is not refundable, but credits can be carried forward two years. The Department of Natural Resources is required to report how many credits are issued, authorized and redeemed each year. DNR officials provided Oversight the information shown below.

Table 2 - Tax Credits Issued and Redeemed

	FY 2010	FY 2011	FY 2012	FY 2013	Totals
Certificates Issued (#)	0	7	6	0	13
Projects (#)	0	7	6	0	13
Amount Authorized	\$0	\$87,925	\$91,365	\$0	\$179,290
Amount Issued	\$0	\$87,925	\$91,365	\$0	\$179,290
Amount Redeemed	\$0	\$23,365	\$45,690	\$69,454	\$138,509

Source: Department of Natural Resources

DNR officials advised us the project completion and review time required for this program delayed the issuance of tax credits until FY 2011. Oversight notes DNR had issued all of the credits for approved projects (see Table 1) during FY 2011 and FY 2012; there are no more tax credits to be issued unless the program is reauthorized and extended. Due to the two year carry-forward provision, the remaining \$40,781 in tax credits for this program, which were outstanding as of the end of FY 2013, may be redeemed in FY 2014.

Tax Credit Transferability

The AFITC can also be assigned, transferred, sold or otherwise conveyed. Department of Natural Resources staff notifies applicants of their ability to assign or transfer the credit, and requires them to file a formal notice with the Department of Revenue if they do so. DOR officials stated they had not been notified of any changes in ownership for these tax credits.

Limited Market Impact

Oversight notes there were only thirteen projects approved for tax credits in this program. One of the thirteen projects was for a fleet fueling program; the other twelve projects were retail fuel installations. We discussed with management their understanding of the reasons for the limited participation in the program, and DNR staff noted the limited time available for projects to be implemented in this program might have been a factor.

DNR budget worksheets for this program indicated there were 107 locations dispensing alternative fuels to the public but we were not provided a detailed list of those locations. A report from the United States Department of Energy, Alternative Fuels Data Center (DOE), indicated 328 alternative fuel sites in Missouri; however, that report counted a location once for each type of alternative fuel offered. Therefore, a location with more than one type of alternative fuel would be listed more than once in the DOE report.

Oversight requested information from the Department of Revenue and the Department of Agriculture to determine the actual number of locations in Missouri which offer alternative fuels. Department of Revenue staff advised us their organization did not maintain information on the numbers or locations of motor fuel retailers. Officials from the Department of Agriculture stated there were 348 locations offering e85 but they were not able to provide a number of biodiesel or other alternative fuel locations.

Oversight found a commercial website which indicated the total number of alternative fuel locations was 348, the same number the Department of Agriculture listed for e85; the website also listed a total of 95 biodiesel locations in Missouri. Oversight assumes a significant number of the alternative fuel locations could have been constructed prior to the availability of the tax credit, or that existing facilities at some locations were converted to alternative fuel dispensing at minimal cost. Oversight was not able to locate any information on the dates the alternative fuel locations began operation other than the locations in this tax credit program.

Missouri Tax Credit Review Commission Reports

On July 21, 2010, Governor Nixon created the Missouri Tax Credit Review Commission, which conducted a comprehensive review and analysis of all Missouri tax credit programs. The Commission report stated "... if the Alternative Fuel Infrastructure Tax Credit is reauthorized during the 2011 legislative session (currently set to sunset after tax year 2012), the General Assembly should consider expanding its applicability to include electric vehicle infrastructure and should continue the annual cap of \$1 million to ensure budget predictability." On September 12, 2012, the Governor requested the Tax Credit Review Commission update its recommendations and determine the extent to which those recommendations should be supplemented, amended, or rescinded. The Commission made no changes to its original recommendation on this tax credit program.

Legislative Action

On May 17, 2013, the Missouri General Assembly passed Conference Committee Substitute for House Committee Substitute for Senate Bill 51 which would have extended the sunset on the Alternative Fuel Infrastructure Tax Credit to August 28, 2019. In addition, this proposal would have continued the one million dollar annual program cap, made pass through business entities eligible for the credit, revised the dates for installation of alternative fuel stations to January 1, 2014 through January 1, 2017, and extended the sunset date for the program from August 28, 2014 to August 28, 2019.

The Governor vetoed the bill on June 26, 2013. Therefore, this program will sunset on August 28, 2014 unless the General Assembly overrides the Governor's veto or legislative action is taken during the 2014 Session.

Oversight Recommendations

- A. Oversight does not offer a recommendation as to the reauthorization or termination of this program.
- B. Oversight notes the program could possibly have been expanded with more publicity but assumes fueling station operators and equipment vendors would become aware of this program from the Department of Natural Resources website and trade publications. If the program is reauthorized, Oversight recommends an effort to expand public awareness of the program.
- B. Officials from the Department of Natural Resources noted they had received a number of inquiries about tax credits for electric vehicle recharge stations, but those stations were not eligible for tax credits in this program. DNR officials suggested making those stations eligible for tax credits under an extended program. If the program is reauthorized, Oversight recommends the General Assembly consider making electrical recharge stations eligible for this program.